

Senate Bill No. 1037

CHAPTER 99

An act to amend Sections 350, 697, 708, 1520, 1521, and 1522 of, to add Section 691.1 to, and to repeal and add Section 1501.2 of, the Financial Code, relating to financial institutions.

[Approved by Governor July 20, 2007. Filed with
Secretary of State July 20, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1037, Committee on Banking, Finance and Insurance. Banking and trust business.

Existing law, the Banking Law, provides for the regulation of banks and trust companies by the Commissioner of Financial Institutions.

Existing law specifies that the Corporate Securities Law does not apply to securities issued by and representing an interest in or a direct obligation of a specified bank or trust company.

This bill would instead specify that the Corporate Securities Law of 1968 does not apply to the offer and sale of securities issued by and representing an interest in or a direct obligation of a specified bank or trust company if the securities are offered and sold pursuant to the commissioner's authorization, as specified, or the securities are exempt, as specified.

Under existing law, no specified bank may offer or sell any security issued by it unless the commissioner has issued a permit authorizing that sale.

This bill would make various transactions exempt from the requirement that the commissioner issue a permit authorizing that sale.

Under existing law regulating trust companies, no corporation may engage in the trust business unless certain requirements are satisfied. Existing law permits a nonprofit corporation to act as a receiver as a result of the appointment by a court.

This bill would delete that provision and instead specify that various persons are exempt from meeting certain requirements before engaging in the trust and banking business. Examples of these persons include, among others, any natural persons serving as trustee of 1 or more trusts where at least 1 trustor is a family member, as defined, and any member of the State Bar or any certified public accountant, as specified, as well as any nonprofit corporation acting as trustee incidental to the purposes for which it was organized, as specified. The bill would also define various terms and make numerous technical changes.

The people of the State of California do enact as follows:

SECTION 1. Section 350 of the Financial Code is amended to read:

350. When authorized by the commissioner as provided in this chapter a corporation may be formed by one or more persons in accordance with the laws of this state for the purpose of conducting a commercial banking business or a trust business, or both of them. The qualification requirements of the Corporate Securities Law of 1968 shall not apply to the offer and sale of securities issued by and representing an interest in or a direct obligation of a bank or trust company incorporated under the laws of this state if the securities are offered and sold pursuant to the commissioner's authorization described in Section 691 or the securities are exempt from authorization pursuant to Section 691.1, or by a regulation or order of the commissioner.

SEC. 2. Section 691.1 is added to the Financial Code, to read:

691.1. The following transactions are exempt from Section 691:

(a) (1) Any offer (but not a sale) not involving a public offering by a bank organized under the laws of this state of its securities and the execution and delivery of any agreement for the sale of the securities pursuant to the offer if no part of the consideration for the securities is paid to or received by the bank and none of the securities are issued until the sale of the securities is authorized by the commissioner or exempted from authorization.

(2) For purposes of paragraph (1), an offer does not involve any public offering if the offers are not made to more than 25 persons and any agreement for the sale of the securities is not entered into with more than 10 of those 25 persons, and if all of the offerees either have a preexisting personal or business relationship with the bank or its officers, directors, or controlling persons, or by reason of their business or financial experience the offerees could be reasonably assumed to have the capacity to protect their own interests in connection with the transaction.

(b) Any stock split by a bank organized under the laws of this state that is effected pursuant to an amendment to its articles, an agreement of merger, or a certificate of ownership that has been approved by the commissioner, unless this exemption is withheld by order of the commissioner.

(c) Any offer or sale of securities by a bank organized under the laws of this state that is either (1) to a person actually approved by the commissioner pursuant to Section 702 to acquire control of the bank if all of the material terms and conditions of the offer and sale of securities are disclosed in the application for approval specified in Section 702 and the offer and sale of securities is in accordance with the terms and subject to the conditions of the approval to acquire control or (2) in a transaction exempted from the approval requirement of Section 701 by a regulation or an order of the commissioner, unless this exemption is withheld by order of the commissioner.

SEC. 3. Section 697 of the Financial Code is amended to read:

697. There shall be exempted from the provisions of Section 691 any transaction or security, including, without limitation, any type or class of transactions or securities, which the commissioner by regulation or order

exempts as not being comprehended within the purposes of this article and the regulation of which he or she finds is not necessary or appropriate in the public interest or for the protection of investors.

SEC. 4. Section 708 of the Financial Code is amended to read:

708. There shall be exempted from the provisions of Section 701 any transaction, including, without limitation, any type or class of transactions, which the commissioner by regulation or order exempts as not being comprehended within the purposes of this article and the regulation of which the commissioner finds is not necessary or appropriate in the public interest or for the protection of a bank, a controlling person, or the depositors, creditors, or shareholders of a bank or a controlling person.

SEC. 5. Section 1501.2 of the Financial Code is repealed.

SEC. 6. Section 1501.2 is added to the Financial Code, to read:

1501.2. The following persons are exempt from the restrictions and prohibitions contained in Section 1500 and Article 3 (commencing with Section 3390) of Chapter 18:

(a) Any natural person serving as trustee of one or more trusts where at least one trustor is a family member of that trustee. For purposes of this section, “family member” means any lineal ancestor, lineal descendant, person having a common lineal ancestor of not more than four generations distant, spouse, father-in-law, mother-in-law, sister-in-law, brother-in-law, stepparent, or stepchild.

(b) Any member of the State Bar, as specified in Section 6002 of the Business and Professions Code, any certified public accountant, as defined in Section 5033 of the Business and Professions Code, and any professional corporation of one or more members of the State Bar or certified public accountants, where these professionals are acting as trustee of a trust established by them for their respective clients, provided that the member of the State Bar, certified public accountant, or professional corporation engages in no advertising for trust business in this state.

(c) Subject to all applicable limitations and restrictions in law for nonprofit corporations, any nonprofit corporation acting as trustee incidental to the purposes for which it was organized.

(d) Any person appointed as receiver, trustee, or other fiduciary by a court of competent jurisdiction acting pursuant to that authority.

SEC. 7. Section 1520 of the Financial Code is amended to read:

1520. It is the intent of the Legislature that the provisions of this article, insofar as they are contained in the regulations regarding fiduciary activities of national banks (Part 9 (commencing with Section 9.1) of Title 12 of the Code of Federal Regulations) of the Office of the Comptroller of the Currency, conform, and be interpreted by anyone construing the provisions of this article to so conform, to those regulations, any rule or interpretation promulgated thereunder by the Office of the Comptroller of the Currency, and to any interpretation issued by an official or employee of the Office of Comptroller of the Currency duly authorized to issue the interpretation.

SEC. 8. Section 1521 of the Financial Code is amended to read:

1521. For purposes of Section 1522, the following terms have the following meanings:

(a) “Bank” means any of the following:

(1) A commercial bank, industrial bank, or trust company incorporated under the laws of this state.

(2) A foreign (other state) bank that may establish a branch office in this state in accordance with Article 2 (commencing with Section 3820) of Chapter 22 of Division 1.

(b) “Fiduciary Regulations” means the regulations regarding fiduciary activities of national banks promulgated by the Office of the Comptroller of the Currency (Part 9 (commencing with Section 9.1) of Title 12 of the Code of Federal Regulations), as amended from time to time.

(c) “Affiliate” has the meaning set forth in Section 150 of the Corporations Code.

(d) “Applicable law” means the law of the state, another state, or other jurisdiction governing a bank’s fiduciary relationships, any applicable federal laws governing those relationships, or any court order pertaining to those relationships.

(e) “Custodian under a uniform gifts to minors act” means a fiduciary relationship established pursuant to the California Uniform Transfers to Minors Act (Part 9 (commencing with 3900) of Division 4 of the Probate Code).

(f) “Fiduciary account” means an account administered by a bank acting in a fiduciary capacity.

(g) “Fiduciary capacity” means trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the bank receives a fee for its investment advice; any capacity in which the bank possesses investment discretion on behalf of another; or any other similar capacity.

(h) “Fiduciary powers” means the powers granted a bank by virtue of its receipt of the authority to engage in trust business from the commissioner.

(i) “Guardian” means the guardian or conservator, by whatever name used by law, of the estate of a minor, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

(j) “Investment discretion” means, with respect to an account, the sole or shared authority, whether or not that authority is exercised, to determine what securities or other assets to purchase or sell on behalf of that account. A bank that delegates its authority over investments and a bank that receives delegated authority over investments shall both be deemed to have investment discretion.

(k) “Trust office” means an office of a bank, other than a main office, at which the bank engages in the trust business. A trust office that engages in core banking business, as defined in subdivision (b) of Section 3800, is considered a branch office of the bank.

(l) “Trust representative office” means a facility as defined in subdivision (c) of Section 3800.

SEC. 9. Section 1522 of the Financial Code is amended to read:

1522. (a) Sections 9.4 to 9.6, inclusive, Sections 9.8 to 9.15, inclusive, and Sections 9.18 to 9.101, inclusive, of the Fiduciary Regulations in all of their particular, including footnotes, are hereby referred to, incorporated by reference into this article, and adopted.

(b) All references to the term “national bank” or “national banks” used in the Fiduciary Regulations shall mean “bank” or “banks” for purposes of this article.

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